

2011 SENATE JUDICIARY

SB 2113

2011 SENATE STANDING COMMITTEE MINUTES

Senate Judiciary Committee
Fort Lincoln Room, State Capitol

SB 2113
1/12/11
Job #12845

Conference Committee

Committee Clerk Signature



Explanation or reason for introduction of bill/resolution:

Relating to chemical tests and the state crime laboratory

Minutes:

There is attached written testimony

Senator Nething – Chairman

Margaret Pearson – State Toxicologist – See written testimony.

Senator Sitte – Asks about security on the web site.

Pearson – Explains it is a secure web site for the Attorney General. All information is in PDF that cannot be changed by the public.

Senator Sitte – Her concern was that no one who wanted to do harm would be able to get at the records. She wonders if attorneys can view the documents belonging to cases they are not involved with.

Pearson – Replies, the documents she is referring to are foundational documents. It just indicates to courts a copy of the method which should be used for the analysis of blood, breath or urine. It indicates the individuals that she has approved and certified as operators of both the breath testing equipment as well as the blood testing equipment at the crime lab. Just factual documents rather than an individual's report.

Close the hearing on 2113

Senator Olafson moves a do pass

Senator Lyson seconds

Rollcall vote for do pass

6 yes

0 no

Senator Olafson will carry

Date: 1/12/11
Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2113

Senate Judiciary Committee

Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Senator Olafson Seconded By Senator Lyson

Senators	Yes	No	Senators	Yes	No
Dave Nething - Chairman	X		Carolyn Nelson	X	
Curtis Olafson - V. Chairman	X				
Stanley Lyson	X				
Margaret Sitte	X				
Ronald Sorvaag	X				

Total (Yes) 6 No 0

Absent _____

Floor Assignment Senator Olafson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2113: Judiciary Committee (Sen. Nething, Chairman) recommends DO PASS
(6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2113 was placed on the
Eleventh order on the calendar.

2011 HOUSE JUDICIARY

SB 2113

2011 HOUSE STANDING COMMITTEE MINUTES

House Judiciary Committee
Prairie Room, State Capitol

SB 2113
March 8, 2011
14992

Conference Committee

Committee Clerk Signature

W Penrose

Minutes:

Chairman DeKrey: We will open the hearing on SB 2113.

Margaret Pearson, ND State Toxicologist: Support (attached 1 and 2).

Chairman DeKrey: Thank you. Further testimony in support. Testimony in opposition. We will close the hearing. We will take a look at SB 2113.

Rep. Hogan: I move the amendment from the State Toxicologist.

Rep. Delmore: Second the motion.

Chairman DeKrey: We will take a voice vote. Motion carried.

Rep. Delmore: I move a Do Pass as amended.

Rep. Koppelman: Second the motion.

13 YES 0 NO 1 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Steiner

March 7, 2011

VK
3/7/11

PROPOSED AMENDMENTS TO SENATE BILL NO. 2113

Page 22, line 9, after "director" insert "and state crime laboratory"

Page 22, line 12, after "director" insert "and state crime laboratory"

Renumber accordingly

Date: 3/7/11
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 2113

House JUDICIARY Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.8103.01001 .02000

Action Taken: Do Pass Do Not Pass Amended Adopt Amendment
 Rerefer to Appropriations Reconsider

Motion Made By Rep. Delmore Seconded By Rep. Koppelman

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Guggisberg	✓	
Rep. Beadle	✓		Rep. Hogan	✓	
Rep. Boehning	✓		Rep. Onstad	✓	
Rep. Brabandt	✓				
Rep. Kingsbury	Absent				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				
Rep. Maragos	✓				
Rep. Steiner	✓				

Total (Yes) 13 No 0

Absent 1

Floor Assignment Rep. Steiner

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2113: Judiciary Committee (Rep. DeKrey, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2113 was placed on the Sixth order on the calendar.

Page 22, line 9, after "director" insert "and state crime laboratory"

Page 22, line 12, after "director" insert "and state crime laboratory"

Renumber accordingly

2011 TESTIMONY

SB 2113

SENATE BILL 2113
SENATE JUDICIARY COMMITTEE
SENATOR DAVE NETHING, CHAIRMAN
January 12, 2011

Chairman Nething and Members of the Senate Committee:

My name is Margaret Pearson. I am the State Toxicologist. I speak in favor of Senate Bill No. 2113.

Senate Bill 2113 amends sections of the North Dakota Century Code (NDCC) relating to chemical testing by the State Crime Laboratory, including amendments to the following subjects: (1) Boat operators, NDCC Ch. 20.1-13.1; (2) Hunters, NDCC Ch. 20.1-15; (3) Motor vehicle operators, NDCC Ch. 39-20; and (4) Snowmobile operators, NDCC Ch. 39-24.1.

The amendments in Senate Bill 2113 address the following matters:

1. To provide technical changes to statutes to distinguish testing for the concentration of alcohol in blood, breath, and urine samples as independent samples with independent concentrations;
2. To provide technical changes to statutes to state samples of blood or urine are analyzed for the presence of drugs, not for concentration levels;
3. To authorize the Director of the State Crime Laboratory, or the Director's designee, to certify foundational court documents, including registers of approved breath testing devices, registers of qualified and certified operators of breath testing devices and blood analysts, and operational checklists and post these documents electronically on the North Dakota Attorney General's website instead of mailing all the documents and updates to County Recorders and other public officials.
4. To remove saliva as a possible sample for testing for alcohol concentration and the presence of drugs.
5. To uniformly refer throughout the law that the unit of measure of alcohol concentration is "milliliter", and not "cubic centimeter".

1. Technical changes to the statutes relating to measurement of alcohol concentrations

Subsection 4 of Section 39-20-07 specifies alcohol concentrations are measured as follows:

1. Grams of alcohol per one hundred milliliters of blood (referred to gram percent)
2. Grams of alcohol per two hundred ten liters of end expiratory breath
3. Grams of alcohol per sixty-seven milliliters of urine

Yet, there are many statutes relating to chemical testing for alcohol concentration that presently include language to the following effect:

"evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine"

When a sample is analyzed for alcohol concentration whether the sample is blood, breath, or urine, the sample is analyzed independently of the other sample that may be available. The alcohol concentration of each sample is calculated and reported using the units specified in the law for that particular sample (e.g., Breath alcohol concentration of 0.08 grams per 210 liters of end expiratory air). The alcohol concentration of a breath or urine sample is not re-calculated to be interpreted as blood alcohol concentration.

The correct language is: "...chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine."

Multiple statutes require amendments to correct the language, including:

Boating NDCC §§ 20.1-13.1-01, 20.1-13.1-03, 20.1-13.1-08, and 20.1-13.1-10

Hunting NDCC §§ 20.1-15-01, 20.1-15-03, 20.1-15-08, 20.1-15-11, and 20.1-15-15

Motor Vehicles NDCC §§ 39-20-01, 39-20-02, 39-20-07, and 39-20-14

Snowmobiles NDCC §§ 39-24.1-01, 39-24.1-03, 39-24.1-08

2. Analytical testing for drugs

The current statutory references to testing for "concentration of drugs" needs to be changed to testing for "presence of drugs"

Samples submitted to the State Crime Laboratory are currently tested for the presence of drugs. While the drugs reported are tested and confirmed to be present in the blood or urine samples submitted, not all drugs can be quantitated. In addition, the concentration of the drug present may not have a direct correlation to the impairment of the subject being tested.

Therefore, the same statutes that need to be amended to state that testing is to determine alcohol concentration in an individual's blood, breath, or urine also need to be amended to state that the testing is to determine the presence of drugs, not the concentration of drugs.

3. Foundational documents to the North Dakota Attorney General's website.

NDCC Chapters 20.1-13.1, 20.1-15, 39-20, and 39-24.1 require the Director of the State Crime Laboratory, or the Director's designee, to certify and file foundational documents for alcohol concentration testing and testing for the presence of drugs. The purpose of the documents is to lay proper foundation for the analytical test reports. The analytical reports may require additional steps for admissibility, including testimony of the analyst. This allows the case to proceed without foundational testimony from the State Crime Laboratory staff. Crime Laboratory Staff may still be required to testify in order to establish the admissibility of the analytical report.

Current law requires the State Crime Laboratory to submit certified paper copies of its records, including registers of approved testing devices, registers of currently qualified and certified operators and analysts, and operational checklists and forms for approved methods, to each County Recorder and other agencies and officials specified by law, such as the Director of the Department of Transportation and the Director of the Game and Fish Department. This is required in NDCC Chapters 20.1-13.1 (boating), 20.1-15, (hunting), 39-20 (motor vehicles), and 39-24.1 (snowmobiles)

Each year the State Crime Laboratory is required to submit more than 20 documents and supplements to each county recorder and multiple other agencies and officials. The length of the documents varies from two to 23 pages. The present list of recipients for each document totals 101 recipients. In order to save time and tax dollars, the State Crime Laboratory attempted to send certified copies of each document by e-mail to the statutorily specified recipients. This became cumbersome and incomplete on account of numerous changes of officials and email addresses. The consequence of any one of the recipients failing to receive any one required record may result in the loss of a case in court.

By amending the law to allow the certified records of the State Crime Laboratory to be electronically posted to the North Dakota Attorney General's website, there will be

a more facilitated and reliable access to the records and an anticipated significant savings of time and tax dollars.

Multiple statutes require amendments to authorize electronic posting of State Crime Laboratory Records to the Attorney General's Website, including:

Boating NDCC §§ 20.1-13.1-03, 20.1-13.1-08, and 20.1-13.1-10

Hunting NDCC §§ 20.1-15-03, 20.1-15-08, and 20.1-15-11

Motor Vehicles NDCC §§ 39-06.2-10.6, 39-20-02, 39-20-05, 39-20-07, and 39-20-14

Snowmobiles NDCC §§ 39-24.1-03 and 39-24.1-08

4. Deletion of saliva as a sample for analysis.

The State Crime Laboratory does not test saliva for the purposes of boating under the influence, hunting under the influence, driving a motor vehicle under the influence, or driving a snowmobile under the influence, and has not used this procedure since 1975. The same sections that are being amended for the above purposes include references to testing saliva to measure alcohol concentration or the presence of drugs; therefore, it is prudent to amend the statutes to delete reference to testing saliva samples as part of this bill.

5. Terminology Change from Cubic Centimeter to Milliliter.

Subsection 2 of NDCC Section 39-20-07 specifies alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine. Subsection 2 of NDCC Section 20.1-13-10, subsection 4 of NDCC Section 20.1-15-11, and subsection 2 of NDCC Section 39-24.1-08 specify alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine. Why the language is not uniform is not apparent, but it needs to be uniform and consistent with the language used at the State Crime Laboratory for analytical testing for alcohol concentration, which is "milliliters".

We ask that you give Senate Bill 2113 a "do pass" recommendation in its entirety. Thank you for your time and attention in this matter.

**SENATE BILL 2113
HOUSE JUDICIARY COMMITTEE
REPRESENTATIVE DUANE DEKREY, CHAIRMAN
March 7, 2011**

Chairman DeKrey and Members of the House Judiciary Committee:

My name is Margaret Pearson. I am the State Toxicologist. I speak in favor of Senate Bill No. 2113.

State law requires chemical testing for (1) Boat operators, NDCC Ch. 20.1-13.1; (2) Hunters, NDCC Ch. 20.1-15; (3) Motor vehicle operators, NDCC Ch. 39-20; and (4) Snowmobile operators, NDCC Ch. 39-24.1. The State Crime Laboratory is charged with overseeing the chemical testing required under these chapters, including approving qualifications and credentials of individuals who collect the samples for testing, the testing devices, the testing device operators, and the methods for chemical testing.

Senate Bill 2113 addresses the following matters:

1. It authorizes the Crime Laboratory to certify foundational documents, including registers of approved breath testing devices and qualified and certified operators of breath testing devices and blood analysts, and operational checklists and post these documents electronically on the North Dakota Attorney General's website.
2. All four chapters specify that alcohol concentration is based on grams of alcohol in the blood, the breath, or in urine; in other words, the alcohol concentration is based on the particular sample analyzed. However, technical or "housekeeping" changes are necessary to other statutory language that refers to the concentration of alcohol in the blood based upon an analysis of a sample of blood, breath, saliva, or urine. SB 2113 makes those housekeeping changes.
3. Blood or urine is only analyzed for the presence of drugs, not for concentration or amount. Present language refers to concentration or amount of drugs. SB 2113 changes the language to refer to testing for the presence of drugs.
4. Present statutes provide for testing for saliva samples. Saliva does not present a viable sample for testing for alcohol concentration or the presence of drugs and the Crime Laboratory cannot test saliva for these purposes. SB 2113 deletes the reference to saliva samples.
5. Several statutes refer to the unit of measure of alcohol concentration as "cubic centimeter", while one chapter refers to the unit of measure concentration as "milliliter". The preferred terminology is "milliliter".

1. Foundational documents to the North Dakota Attorney General's website.

N.D.C.C. Chapters 20.1-13.1, 20.1-15, 39-20, and 39-24.1 require the Director of the State Crime Laboratory, or the Director's designee, to certify and file foundational documents for alcohol concentration testing and testing for the presence of drugs. The purpose of the documents is to lay proper foundation for the analytical test reports. This allows the case to proceed without foundational testimony from the State Crime Laboratory staff. The actual analytical reports may require additional steps for admissibility, including testimony of the Crime Laboratory analyst who did the testing and prepared the analytical report.

The current statutes require the State Crime Laboratory to submit certified paper copies of its records, including registers of approved testing devices, registers of currently qualified and certified operators and analysts, and operational checklists and forms for approved methods, to each County Recorder and other agencies and officials specified by law, such as the Director of the Department of Transportation and the Director of the Game and Fish Department. This is required in N.D.C.C. Chapters 20.1-13.1 (boating), 20.1-15, (hunting), 39-20 (motor vehicles), and 39-24.1 (snowmobiles)

Each year the State Crime Laboratory submits more than 20 documents and supplements to each county recorder and multiple other agencies and officials under the current statutory system. The length of the documents varies from two to 23 pages. The present list of recipients for each document totals 101 recipients. In order to save time and tax dollars, the State Crime Laboratory attempted to send certified copies of each document by e-mail to the statutorily specified recipients. This became cumbersome and incomplete on account of numerous changes of officials and email addresses. The consequence of any one of the recipients failing to receive any one required record may result in the loss of a case in court.

By amending the law to allow the certified records of the State Crime Laboratory to be electronically posted to the North Dakota Attorney General's website, there will be a more facilitated and reliable access to the records and an anticipated significant savings of time and tax dollars. These changes will only apply to the foundational records, and not the analytical reports themselves.

Multiple statutes require amendments to authorize electronic posting of State Crime Laboratory Records to the Attorney General's Website, including:

Boating	NDCC §§ 20.1-13.1-03, 20.1-13.1-08, and 20.1-13.1-10
Hunting	NDCC §§ 20.1-15-03, 20.1-15-08, and 20.1-15-11
Motor Vehicles	NDCC §§ 39-06.2-10.6, 39-20-02, 39-20-05, 39-20-07, and 39-20-14
Snowmobiles	NDCC §§ 39-24.1-03 and 39-24.1-08

2. Changes to statutory language for measuring alcohol concentrations

The statutes prohibiting hunting, boating, driving a motor vehicle, and driving a snowmobile under the influence all refer to alcohol concentration by weight, e.g., N.D.C.C. § 39-08-01(1)(a) prohibits an individual from driving a motor vehicle if the individual has "an alcohol concentration of at least eight one-hundredths of one percent by weight".

The statutes relating to the interpretation of chemical tests refer to alcohol concentration by weight. For example, subsection 4 of Section 39-20-07 specifies that alcohol concentrations are based on the following:

1. Grams of alcohol per one hundred milliliters of blood (referred to gram percent)
2. Grams of alcohol per two hundred ten liters of end expiratory breath
3. Grams of alcohol per sixty-seven milliliters of urine

This is the correct basis for alcohol concentration. The hunting, boating, and snowmobile statutes are the same (except they refer to cubic centimeters instead of milliliters); however, there is statutory language throughout the four chapters as follows:

"evidence of the amount of alcohol, drugs, or a combination thereof in the person's blood at the time of the act alleged as shown by a chemical analysis of the blood, breath, saliva, or urine"

When a sample is analyzed for alcohol concentration, whether the sample is blood, breath, or urine, the sample is analyzed independently of the other sample that may be available. The alcohol concentration of each sample is calculated and reported using the units specified in the law for that particular sample (e.g., Breath alcohol concentration of 0.08 grams per 210 liters of end expiratory breath). The alcohol concentration of a breath or urine sample is not re-calculated to be interpreted as blood alcohol concentration.

The technically correct language is: "...chemical test, or tests, of the blood, breath, or urine for the purpose of determining the alcohol concentration or presence of other drugs, or combination thereof, in the individual's blood, breath, or urine." The language change does not affect the legal standards for hunting, boating, driving a motor vehicle, or driving a snowmobile under the influence.

Multiple statutes require housekeeping amendments to correct the language:

Boating: NDCC §§ 20.1-13.1-01, 20.1-13.1-03, 20.1-13.1-08, and 20.1-13.1-10
Hunting: NDCC §§ 20.1-15-01, 20.1-15-03, 20.1-15-08, 20.1-15-11, and 20.1-15-15
Motor Vehicles: NDCC §§ 39-20-01, 39-20-02, 39-20-07, and 39-20-14
Snowmobiles: NDCC §§ 39-24.1-01, 39-24.1-03, 39-24.1-08

3. Analytical testing for presence of drugs

The current statutory references to testing for the amount of drugs are amended to refer to testing for "presence of drugs", not the amount or concentration.

Samples submitted to the State Crime Laboratory are currently tested for the presence of drugs. While the drugs reported are tested and confirmed to be present in the blood or urine samples submitted, not all drugs can be quantitated. In addition, the concentration of the drug present may not have a direct correlation to the impairment of the subject being tested.

Therefore, the same statutes that need to be amended to state testing is to determine alcohol concentration in an individual's blood, breath, or urine also need to be amended to state that the testing is to determine the presence of drugs, not the amount or concentration of drugs.

4. Deletion of saliva as a sample for analysis.

The State Crime Laboratory does not test saliva for the purposes of boating under the influence, hunting under the influence, driving a motor vehicle under the influence, or driving a snowmobile under the influence, and has not used this procedure since 1975. The same sections that are being amended for the above purposes include references to testing saliva to measure alcohol concentration or the presence of drugs; therefore, it is prudent to amend the statutes to delete reference to testing saliva samples as part of this bill.

5. Terminology Change from Cubic Centimeter to Milliliter.

Subsection 2 of NDCC Section 39-20-07 specifies alcohol concentration is based upon grams of alcohol per one hundred milliliters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven milliliters of urine. Subsection 2 of NDCC Section 20.1-13-10, subsection 4 of NDCC Section 20.1-15-11, and subsection 2 of NDCC Section 39-24.1-08 specify alcohol concentration is based upon grams of alcohol per one hundred cubic centimeters of blood or grams of alcohol per two hundred ten liters of end expiratory breath or grams of alcohol per sixty-seven cubic centimeters of urine. Why the language is not uniform is not apparent, but it needs to be uniform and consistent with the language used at the State Crime Laboratory for analytical testing for alcohol concentration, which is "milliliters".

We ask that you give Senate Bill 2113 a "do pass" recommendation in its entirety. Thank you for your time and attention in this matter.

PROPOSED AMENDMENT TO SENATE BILL NO. 2113

Page 22, line 9, after "director" insert "and state crime laboratory"

Page 22, line 12, after "director" insert "and state crime laboratory"